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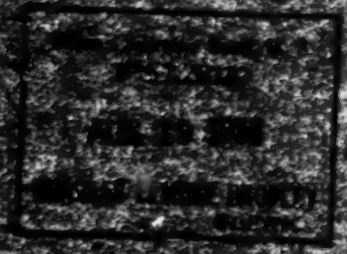

In the Supreme Court of the United States

October Term, 1939

THE UNITED STATES OF AMERICA, APPELLANT

v.

THE PENNSYLVANIA RAILROAD COMPANY

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA*

STATEMENT AS TO JURISDICTION

# In the District Court of the United States for the Eastern District of Pennsylvania

No. 7382

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

THE PENNSYLVANIA RAILROAD COMPANY, DEFENDANT

## STATEMENT AS TO JURISDICTION

(Filed July 20th, 1938)

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause.

A. The statutory jurisdiction of the Supreme Court to review by direct appeal the judgment complained of is conferred by Title 18, Section 682, of the United States Code, otherwise known as the Criminal Appeals Act, and by Section 345, Title 28, of the United States Code.

B. The statute of the United States, the construction of which is involved herein is the Act of

February 19, 1903, c. 708, 32 Stat. 847 (re-enacted in Section 2 of the Hepburn Act of June 29, 1906, c. 3591, 34 Stat. 587); 49 U. S. C. A., Section 41 (1), otherwise known as the Elkins Act, section 1 of which (a) declares it to be a misdemeanor for any person or corporation to offer, grant or give, or to solicit, accept or receive a rebate, concession, or discrimination in respect to the transportation of property in interstate commerce by any common carrier subject to the Act to regulate commerce whereby such property shall by any device whatever be transported at less than the published rate, and (b) provides that

> Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one district and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

C. The judgment of the District Court sought to be reviewed was entered on June 23, 1938, and an application for appeal was presented and allowed on July 20, 1938.

D. The indictment alleges that The Pennsylvania Railroad Company, defendant, as a common car-

rier engaged in interstate commerce by railroad, granted to certain shippers rebates and concessions in respect to interstate shipments of property transported by the defendant through the Eastern District of Pennsylvania and within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania, whereby such property was transported by the defendant at less than the published and filed rate.

A demurrer to the indictment was filed by the defendant and was sustained by the District Court solely on the ground that the offenses charged, if they actually existed, were committed at New York, N. Y., where the defendant's agent handed the check for the amount of the rebates to the shipper, and hence that jurisdiction thereof was in the District Court for the Southern District of New York and not in the District Court for the Eastern District of Pennsylvania.

E. The question involved is substantial. The construction placed by the District Court upon the jurisdictional provision of the Elkins Act is contrary not only to the language of the Act, but also to the practical interpretation of the Act through prosecutions for violations since the date of its enactment. The District Court's construction would seriously interfere with and render far more difficult the future administration and enforcement of the Act.

F. The following decisions are believed to sustain the jurisdiction of the Supreme Court to entertain this appeal.

*United States* v. *Keitel*, 211 U. S. 370.
*United States* v. *Nixon*, 235 U. S. 231.
*United States* v. *Hastings*, 296 U. S. 188.
*United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304.

A copy of the District Court's opinion filed June 16, 1938, is appended hereto.*

Respectfully submitted.

[s] N. A. TOWNSEND,
N. A. Townsend,
*Acting Solicitor General.*

[s] J. CULLEN GANEY,
J. Cullen Ganey,
*United States Attorney.*

[s] EDWARD A. KALLICK,
*Assistant U. S. Attorney.*

JULY 1938.

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*CLERK'S NOTE.—The opinion is printed as an appendix to the Jurisdictional Statement in No. 276.

U. S. GOVERNMENT PRINTING OFFICE